

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re JOSE P., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE P.,

Defendant and Appellant.

F038310

(Super. Ct. No. 99235-4)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, J. Robert Jibson and Raymond L. Brosterhous, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Vartabedian, Acting P.J., Harris, J. and Cornell, J.

## **INTRODUCTION**

Appellant Jose P., a minor (Jose), was adjudicated a ward of the court following an admission that he had committed a lewd or lascivious act upon his niece, a 12-year-old child. Before this adjudication, Jose had no criminal record. He was committed to the California Youth Authority (CYA). Jose appeals commitment to the CYA alleging the juvenile court abused his discretion by not adequately considering less restrictive local treatment programs. We will find there was no abuse of discretion and will affirm.

## **STATEMENT OF THE CASE AND FACTS**

On January 7, 2001, Fresno police officers were dispatched to assist in the investigation of the possible rape of a 12-year-old girl who had just given birth at a local hospital. The victim stated that several months earlier, Jose had come into her room while she was asleep, pulled the covers off of her and penetrated her with his penis while holding his hand over her mouth. At the time of this incident, Jose was a 15-year-old male who spoke only Spanish. Jose is the victim's uncle and was living in the victim's home at the time. In a later separate incident, Jose came into the bathroom where the victim was and began to molest her. He was interrupted when the victim's brother kicked in the bathroom door and chased Jose out.

On February 5, 2001, a petition was filed alleging one count of forcible rape and one count of committing a lewd act upon a child. On March 28, 2001, Jose admitted the allegation of lewd and lascivious acts upon a child, a felony violation of Penal Code section 288, subdivision (a), pursuant to a negotiated plea agreement in which the forcible rape charge was dropped. Jose stated during the plea colloquy that he was not aware that the act of intercourse with his minor niece was wrong or that it was a serious crime. The court ordered a psychological evaluation of Jose to be completed prior to the determination of his disposition.

The dispositional hearing was held on May 9, 2001. Both parties agreed that it was a close case as to whether Jose should be assigned to the CYA or a less restrictive local alternative. The court received a psychological evaluation report, which expressed concern that Jose had multiple sexual contacts with the victim but he refused to accept responsibility. The report observed that Jose's "use of physical coercion demonstrates callous disregard for the child victim ...." The report concluded that Jose's return to the family would constitute a physical danger to the child. The court also considered the probation report, which expressed similar concern that Jose had failed to accept responsibility for his actions or to understand that the sexual assault was wrong. In addition, the court heard testimony from the probation department expressing concern that, given the structure of the victim's family, it would not be possible to assure that the victim would not again find herself in the same household as Jose. It also was determined that Jose is an undocumented alien subject to an Immigration and Naturalization Service (INS) hold.

In ordering CYA placement for Jose, the juvenile court found that if he were returned to the family setting, the victim or other potential child victims would be endangered. The court gave great deference to the psychological evaluation and noted Jose's inability to accept responsibility for the criminality of his actions. The court stated its satisfaction that the probation department had considered all less restrictive programs and forms of custody and found them inappropriate. The court made the same determination on its own review of the alternatives and noted that none of the locally available alternatives offered sexual offender treatment programs that were "sufficient for [Jose's] reformation, rehabilitation and punishment." Jose was committed to the custody of the CYA. This appeal followed.

## DISCUSSION

Jose contends on appeal the juvenile court abused its discretion in sentencing him to CYA instead of to a less restrictive local alternative. We find this contention to be without merit.

We are required to uphold the dispositional choice of the juvenile court when there is substantial evidence to support it. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law. [Citations.]” (*Ibid.*; *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.)

Under section 202 as amended in 1984, the objectives of the juvenile court law expressly include “protection and safety of the public” as well as rehabilitation of the minor, and the statute recognizes punishment as a rehabilitative tool. Nevertheless, an order committing a minor to CYA must be supported by evidence demonstrating that (1) the minor probably will benefit from such commitment; and (2) less restrictive alternatives are ineffective or inappropriate. (§ 734; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

Essentially, Jose contends the juvenile court abused its discretion because it failed to make an evidentiary determination whether any local agency would have been able to provide appropriate treatment for Jose and would have been willing to accept him. We find two problems with this contention. First, Jose cites no authority for the proposition that a judicial determination that there is no appropriate local alternative must be supported by testimonial or extrinsic evidence presented on the record. The deferential nature of our review means that we accept the statements of both the probation department and the court that no local options are appropriate at face value unless

evidence to the contrary is presented. In other words, the testimony of the probation department's representative that there were no appropriate local sentencing alternatives constitutes sufficient evidence to establish that fact.

Second, we find that even if less restrictive local alternative sentencing options were available, there would be no abuse of discretion where the juvenile court, in consideration of Jose's refusal to acknowledge the wrongfulness of his actions, committed Jose to CYA custody. "[C]ircumstances in a particular case may well suggest the desirability of a [CYA] commitment despite the availability of such alternative dispositions as placement in a [local facility]." (*In re John H.* (1978) 21 Cal.3d 18, 27.) Circumstances indicating that a less restrictive placement would be ineffective or inappropriate may include the person's attitude (*In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1397), the nature, duration and context of the delinquent conduct (§ 725.5; *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 152-153), the need to hold the minor accountable for his or her actions (§ 202, subd. (b)), and the community's interest in protection from crime (§ 202, subd. (a); *In re Lorenza M.*, *supra*, 212 Cal.App.3d at pp. 57-58.) Commitment to CYA is proper if less restrictive dispositions would be ineffective or inappropriate, and there is substantial evidence of probable benefit from CYA. (*In re Lorenza M.*, *supra*, 212 Cal.App.3d at p. 58.)

Here, the psychological evaluation report clearly establishes that Jose cannot be committed to any alternative program that possibly would allow him to come into contact with his niece. The family situation of the victim is so fluid and uncertain as to indicate that her safety interests will be best served if Jose is restrictively detained. Further, the fact that CYA detention is the more punitive alternative has the beneficial effect of communicating to Jose in clear and unambiguous terms that he must immediately disabuse himself of any notion that sexual relations with a minor are permissible because society will harshly punish behavior that sexually victimizes children. We find the juvenile court did not abuse its discretion by choosing the alternative that most

effectively assured the victim's safety while providing the strongest possible impetus for Jose to reform his attitudes and beliefs regarding his actions.

**DISPOSITION**

The judgment is affirmed.